

Application No. 10/735,510  
Response to Office Action

Customer No. 01933

R E M A R K S

Reconsideration of this application, as amended, is respectfully requested.

THE CLAIMS

Claims 1-3 and 17-20 have been amended to make some minor grammatical improvements so as to put them in better form for issuance in a U.S. patent. It is respectfully submitted that the amendments to claims 1-3 and 17-20 are clarifying in nature only, and that the amendments are not related to patentability and do not narrow the scope of these claims either literally or under the doctrine of equivalents.

In addition, claims 4-16 have been canceled, without prejudice, and new claims 21-29 have been added to more clearly recite the subject matter of canceled claims 4-11 corresponding to the second through fifth embodiments of the present invention, as supported by the disclosure in the specification and drawings.

No new matter has been added, and it is respectfully requested that the amendments to claims 1-3 and 17-20 and the addition of new claims 21-29 be approved and entered.

CLAIM FEE

The application was originally filed with 20 claims of which 7 were independent, and the appropriate claim fee was paid

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for such claims. The application now contains 16 claims, of which 6 are independent. Accordingly, it is respectfully submitted that no extra claim fee is required. Nevertheless, authorization is hereby given to charge any additional fees which may be determined to be required to Account No. 06-1378.

THE PRIOR ART REJECTION

Claims 1-4, 6, 7, 9, 11 and 12-20 were rejected under 35 USC 102 as being anticipated by USP 6,084,168 ("Sitrick"), and claims 5, 8, 10 and 13-15 were rejected under 35 USC 103 as being obvious in view of the combination of Sitrick and USP 6,417,435 ("Chantzis et al"). These rejections, however, are respectfully traversed with respect to the claims as amended hereinabove.

According to the present invention as recited in amended independent claims 1 and 3, a performance evaluation apparatus and performance evaluation program are provided in which a reference on-period and actual on-period are extracted from reference-performance data and actual-performance data, respectively, and whereby when the reference on-period and the actual on-period overlap with each other and the pitch of the reference on-period and the pitch of the actual on-period are the same an evaluation point is added to an evaluation score, and if both the pitches are not the same the evaluation point is subtracted from the evaluation score.

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With this arrangement, the CPU can carry out performance evaluation with a reduced operation load. In addition, the evaluation score is only calculated when a player makes an actual performance. As a result, only the player's actual performance is evaluated.

In the Office Action, the Examiner asserts that Sitrick discloses supplying reference-performance data and actual-performance data, extracting a reference on-period and a real on-period therefrom, and then judging, comparing and calculating an evaluation score as according to the present invention. It is respectfully pointed out, however, that column 11, lines 29-40 of Sitrick referred to by the Examiner merely discloses that:

"This analysis determines divergence from the selected musical score, and reveals errors or deviations from desired performance goals (e.g. match of timing of notes, duration of notes, pitch of notes, etc.), and to display those errors (284) (such as by audio or video means). Predefined performance goals provide the knowledge basis for expert system based analysis. The system can then generate a graded score (286) indicating errors, and can present it in numerous formats such as histograms, frequency of errors, spacing of errors, etc."

That is, Sitrick merely broadly discloses performing a comparison of reference performance data and actual performance data in order to reveal errors or deviation from desired performance goals (e.g. match of timing of notes, duration of notes, pitch of notes, etc). Sitrick, however, does not specifically disclose how this comparison is actually performed, and it is respectfully

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submitted that Sitrick clearly does not disclose, teach or suggest the specific features of the present invention as recited in amended independent claims 1 and 3 whereby reference on-period and actual on-period are extracted from reference-performance data and actual-performance data, respectively, and whereby an evaluation point is added to an evaluation score when the reference on-period and the actual on-period overlap with each other and the pitch of the reference on-period and the pitch of the actual on-period are the same, and whereby the evaluation point is subtracted from the evaluation score if both the pitches are not the same.

With respect to amended independent claims 17 and 20, moreover, it is respectfully pointed out that these claims recite the features of the present invention whereby a coincidence in timing is determined when the timing between a time of initiating performance of a musical sound and a designated sound generation period overlap or overlap within a predetermined (grace) period, and whereby an evaluation point is added when the pitch of the performed musical sound coincides with the pitch of a designated sound-generation event and there is a coincidence in timing, and whereby the evaluation point is subtracted when the pitch of the performed musical sound does not coincide with the pitch of the designated sound-generation event or when there is no coincidence in timing. And it is respectfully submitted that Sitrick simply does not at all disclose, teach or suggest these specific

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features of the claimed present invention as recited in amended independent claims 17 and 20.

Still further, with respect to new independent claims 21 and 29, it is respectfully pointed out that these claims recite the features of the present invention whereby an evaluation period is set in accordance with contents of the reference-performance data, so that the evaluation period is set to a proper length for performance evaluation and the user's performance technique can be evaluated correctly. And it is respectfully submitted that Sitrick also does not disclose, teach or suggest these specific features of the claimed present invention as recited in new independent claims 21 and 29.

In view of the foregoing, it is respectfully submitted that the present invention as recited in each of amended independent claims 1, 13, 17 and 20 and new independent claims 21 and 29, as well as all of the dependent claims respectively depending therefrom, clearly patentably distinguishes over Sitrick, taken singly or in combination with Chantzis et al, under 35 USC 102 and under 35 USC 103.

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Entry of this Amendment, allowance of the claims and the passing of this application to issue are respectfully solicited.

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If the Examiner has any comments, questions, objections or recommendations, the Examiner is invited to telephone the undersigned at the telephone number given below for prompt action.

Respectfully submitted,

/Douglas Holtz/

Douglas Holtz  
Reg. No. 33,902

Frishauf, Holtz, Goodman & Chick, P.C.  
220 Fifth Avenue - 16<sup>th</sup> Floor  
New York, New York 10001-7708  
Tel. No. (212) 319-4900  
Fax No. (212) 319-5101

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